

28444

SERVICE DATE - NOVEMBER 13, 1997

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Sec. 5a Application No. 61]

National Classification Committee--Agreement

AGENCY: Surface Transportation Board.

ACTION: Request for Comments.

SUMMARY: The Surface Transportation Board is commencing a proceeding to determine whether, under 49 U.S.C. 13703(d) and (e), it is in the public interest to renew the bureau agreement of the National Classification Committee, which administers the National Motor Freight Classification.

DATES: Written notices of intent to participate are due by November 28, 1997. Shortly thereafter, we will serve a preliminary service list and request for written corrections. By December 11, 1997, we will serve any necessary corrections to the service list. Opening comments are due by January 8, 1998. Reply comments are due by February 5, 1998.

ADDRESSES: Send an original and 10 copies of notices of intent to participate and comments, referring to "Section 5a Application No. 61," to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423. Opening and reply comments must be served on the persons identified as "parties of record" on the service list.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1600.

[TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 13703, we have the authority to immunize approved motor carrier bureau agreements from the antitrust laws. One such bureau, the National Motor Freight Traffic Association, operating through its National Classification Committee (NCC), administers the National Motor Freight Classification (NMFC). The NMFC groups all articles moving by truck into classes based on their transportation characteristics. The NCC operates pursuant to a bureau agreement approved in National Classification Committee--Agreement, 299 I.C.C. 519 (1956), and renewed in National Classification Committee--Agreement, Section 5a Application No. 61 (ICC served May 18, 1987).¹ Under 49 U.S.C. 13703(d) and (e), all motor carrier bureau agreements will expire on December 31, 1998, unless we approve renewal. Renewal of the collective rate setting bureau agreements of the motor carriers is under investigation in Section 5a Application No. 118 (Amendment No. 1), et al.²

By this notice, we are commencing a separate proceeding to explore whether we should renew the NCC's agreement before its statutory expiration. In particular, we question whether the NCC needs antitrust immunity given the fact that its activities, such as

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² See the notice published in the Federal Register on May 20, 1997, at 62 FR 27653, and the Board's decisions in those consolidated proceedings served on May 20, 1997, and August 15, 1997. In the decision served on August 15, 1997, we denied a petition to expand the consolidated proceedings to consider whether antitrust immunity should be continued for activities under the NCC agreement, but stated that we would in the future address matters relating to antitrust immunity for NCC activities separately.

grouping freight with common transportation characteristics, publishing bill of lading formats, and gathering information, would not, on the surface, appear to involve antitrust violations. The parties are invited to address, and organize their discussion of, this and other public interest issues by answering the following specific questions:

1. Does the NCC in fact engage in activities that would violate the antitrust laws in the absence of antitrust immunity conferred under 49 U.S.C. 13703?

2. If the NCC engages in activities that would violate the antitrust laws in the absence of antitrust immunity under section 13703, does the public interest require (a) continued exemption of these activities from antitrust law, subject to our regulation, or (b) a regime of marketplace competition subject to antitrust law? Are there “borderline” areas of NCC activity that might be subject to antitrust enforcement in the absence of immunization under 49 U.S.C. 13703, where the public interest warrants continued antitrust immunity for those activities under that section?

3. Should we exclude from any immunity we might confer activities that would not violate the antitrust laws in the absence of antitrust immunity, so as to avoid confusing the public about the scope and impact of our regulatory jurisdiction?

4. How do the public interests aspects of the NCC’s activities relate to the public interest aspects of the activities of the operating motor carrier rate bureaus, whose renewal is the subject of the proceedings in Section 5a Application No. 118 (Amendment No. 1), et al., supra? If we decide not to renew the rate setting immunity of those bureaus, could we, and should we, nonetheless continue immunity for classification?

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Decided: November 5, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

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